

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO.
)	
SCOTT H. MILLER,)	
)	
Defendant.)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, Claudius B. Modesti, Assistant United States Attorney, and Adam A. Reeves, Trial Attorney, Criminal Division, United States Department of Justice, and the defendant, Scott H. Miller, and the defendant's counsel, Robert D. Luskin, pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

1. The defendant, Scott H. Miller, agrees to waive indictment and plead guilty to a one count criminal information filed with this agreement. Count One charges the defendant with destruction of records in a federal investigation, in violation of Title 18, United States Code, Section 1519. The maximum penalty for this offense is a maximum term of 20 years of imprisonment, a fine of \$250,000, full restitution, a special assessment, and three years of supervised release. The defendant is aware that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a

term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

3. Restitution does not appear to be applicable in this case.

4. The defendant is aware that the defendant's sentence will be imposed in accordance with the Sentencing Guidelines and Policy Statements. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense(s) to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence. The defendant is also aware that any estimate of the probable sentencing range under the sentencing guidelines that the defendant may have received from the defendant's counsel, the United States, or the probation office, is a prediction, not a promise, and is not binding on the United States, the probation office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed.

Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the

statute(s) of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

1. The United States and the defendant agree to recommend to the Court the following under the Sentencing Guidelines and Policy Statements in effect as of January 25, 2003:

a. Applying § 2J1.2:

(a) Base Offense Level -- 14

The United States will not oppose acceptance of responsibility under §3E1.1 as long as Probation recommends acceptance of responsibility and the defendant abides by the plea agreement. Except as provided in paragraph 5 of this Plea Agreement, the United States and the defendant have no other agreements as to the applicability of any other portions of the Sentencing Guidelines and Policy Statements in effect as of January 25, 2003, including, without limitation, the defendant's criminal history under § 4A1.1.

2. The United States will not further criminally prosecute defendant in the Eastern District of Virginia for the specific conduct described either in the criminal information or the statement of facts, or for conduct relating to his employment at PurchasePro.com between September 1998 through the date of his departure from the company in August 2001. Therefore, defendant does not have immunity for crimes related to, but not specifically set out in this plea agreement. Except where specifically noted, this plea agreement binds only the United States Attorney's Office for the Eastern District of Virginia, the United States Department of Justice, Criminal Division (hereafter, the Criminal Division) and the defendant; it does not bind any other prosecutor in any other jurisdiction.

3. The defendant represents to the Court that defendant is satisfied that defendant's attorney has rendered effective assistance. Defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. Defendant understands that the rights of criminal defendants include the following:

a. If the defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the defendant, the United States, and the judge all agree.

b. If a jury trial is conducted, the jury would be composed of twelve laypersons selected at random. The defendant

and defendant's attorney would assist in selecting the jurors by removing prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, that it could not convict the defendant unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt, and that it was to consider each charge separately.

c. If a trial is held by the judge without a jury, the judge would find the facts and, after hearing all the evidence and considering each count separately, determine whether or not the evidence established the defendant's guilt beyond a reasonable doubt.

d. At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those witnesses and defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence in defendant's own behalf. If the witnesses for the defendant would not appear voluntarily, defendant could require their attendance through the subpoena power of the Court.

e. At a trial, the defendant could rely on a privilege against self-incrimination to decline to testify, and no inference of guilt could be drawn from the refusal to testify. If the defendant desired to do so, the defendant could testify in the defendant's own behalf.

4. The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity and the matters under investigation by the United States. In that regard:

a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.

b. The defendant agrees to be reasonably available in the Eastern District of Virginia for all debriefings and pre-trial conferences as the United States may require and to fully and truthfully answer all questions asked of him.

c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice. The defendant stipulates to the admissibility of the results of this polygraph examination if

later offered in a proceeding to determine the defendant's compliance with this plea agreement.

e. The defendant agrees that the accompanying statement of facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether a downward departure is appropriate.

g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

5. a. The United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other criminal prosecution against the defendant in the Eastern District of Virginia, or as to the Criminal Division only, in any other district. Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested to do so by the defendant.

b. Nothing in this plea agreement restricts the Court's or Probation Office's access to information and records

in the possession of the United States. Further, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony. Moreover, nothing in this agreement prevents the government from using such information in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

c. The United States Attorney's Office for the Eastern District of Virginia and the Criminal Division will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction, however, the defendant agrees that the United States Attorney's Office for the Eastern District of Virginia and the Criminal Division may contact the United States Securities and Exchange Commission and voluntarily turn over any information that the defendant provides under this agreement. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the United States Attorney's Office for Eastern District of Virginia and the Criminal Division agree, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

6. This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution that may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

7. The parties agree that the United States reserves its option to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K of the Sentencing Guidelines and Policy Statements, or Rule 35(b) of the Federal Rules of Criminal Procedure, if in its sole discretion, the United States determines that such a departure is appropriate. The parties agree that in cases where the United States does file such a motion, the United States reserves its option to file a further motion under 18 U.S.C. § 3553(e) to permit a departure under any applicable mandatory minimum sentence, if in its sole discretion the United States determines that such a further motion is appropriate.

8. The accompanying Statement of Facts signed by the defendant is hereby incorporated into this plea agreement. The defendant adopts the Statement of Facts and agrees that the facts therein are accurate in every respect and that had the matter

proceeded to trial, the United States would have proved those facts beyond a reasonable doubt.

9. The defendant agrees to join in a motion with the United States under Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure, to disclose grand jury material to the Internal Revenue Service for use in computing and collecting the defendant's taxes, interest and penalties, and to the civil and forfeiture sections of the United States Attorney's Office for use in identifying assets and collecting fines and restitution.

10. The defendant also agrees to file true and correct tax returns for the years 1999 through the present within sixty days and to pay all taxes, interest and penalties for the years 1999 through the present within a reasonable time in accordance with a plan to be devised by the Probation Office.

11. The defendant also agrees to make all books, records and documents available to the Internal Revenue Service for use in computing defendant's taxes, interest and penalties for the years 1999 through the present.

12. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

17. This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, the United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement. In addition, the defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date this agreement is signed may be commenced notwithstanding the subsequent expiration of the statute of limitations. The defendant agrees to waive any statute of limitations with respect to any crime that would otherwise expire after the date of this agreement. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the

defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(e)(6), the Sentencing Guidelines or any other provision of the United States Constitution or federal law. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on substantial assistance as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

18. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

19. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal indictment or criminal information. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

Date: _____

Defendant

20. Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment or criminal information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____

Counsel for Defendant

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
Claudius B. Modesti
Assistant United States Attorney

By: _____
Adam A. Reeves
Trial Attorney, Criminal Division
United States Department of Justice

APPROVED:

_____ Date: _____

Plea Agreement (Revised April 30, 2003)

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EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO.
)	
Scott H. Miller,)	

WAIVER OF INDICTMENT AND VENUE

I, Scott H. Miller, the above named defendant, accused of destruction of documents in a federal investigation in violation of Title 18, United States Code Section 1519, being advised of the nature of the charge(s), the proposed information, and of my rights, hereby waive in open court (i) prosecution by indictment and (ii) to the extent there is any challenge at any time to the venue for this proceeding, the right to be charged in the district in which the crime occurred, namely, either the District of Nevada or the District of Columbia, and consent that the proceeding may be by information rather than by indictment and may occur in the Eastern District of Virginia rather than either the District of Nevada or the District of Columbia.

Date: _____

Defendant

Counsel for Defendant

Before: _____
UNITED STATES DISTRICT JUDGE